REPORT OF SUBCOMMITTEE V

Bruce Crum, Chairman

PAST AND PRESENT EFFORTS TO PRESERVE AGRICULTURAL LAND IN MARYLAND

Over the years limited attention has been given by the general public and the State Legislature to the question of preserving agricultural land in Maryland. The Maryland Farmland Assessment law, first enacted in 1955, has been a model for similar laws in other states. A Governor's Commission On Agricultural Land Preservation was appointed in 1967 and did important work in relation to modification of the Farmland Assessment Law. County zoning laws and ordinances developed over the years have had limited effect in preserving land for agricultural purposes. In the past few years, both county and state legislators have given increasing attention to problems of land use, and in 1973 a number of state land use bills were debated at length and finally rejected. A new Governor's Commission on Land Use is presently considering further legislation.

Following is a discussion of these efforts:

1. Farm Land Assessment

   The use of a special agricultural assessment to provide for assessing farm land on the basis of its use was initiated in legislation in 1955. Among its several purposes was to provide for the continued use of the land for farming purposes at a tax rate compatible with agricultural use. Inherent in its passage was the awareness of the need for for preserving farm land close to the developing metropolitan areas

to maintain a readily available source of food and dairy products, and to encourage the preservation of open space as an amenity necessary to human welfare and happiness. Although the original bill was vetoed by Governor Theodore McKeldin, the legislature overrode the veto at the 1956 session. The law was then amended in 1957, and stood until 1960 when it was held unconstitutional under the Maryland Declaration of Rights. The 1961 legislature then amended Article 15 of the Bill of Rights to permit the legislature to classify land for purposes of taxation; and Article 43 which provided that the legislature could encourage agriculture by assessing farm land on the basis of its use. Both of these amendments were approved by Maryland voters by a vote of more than two to one. In 1967, pursuant to a resolution of the legislature, a Commission on agricultural land preservation was appointed. Before the Commission had sufficient time to act, amendments were proposed to the Farm Land Assessment Law in 1968 and passed the legislature. However, once again, the bill was vetoed by Governor Agnew, and the veto was sustained.

The basis for the current Farm Land Assessment Law was passed in 1969. That law provides that lands devoted to agricultural land would be assessed on the basis of such use. It further provided that lands rezoned at the instance of the owner or for which a subdivision plat was recorded would be assessed both on the basis of agricultural use and on the basis of its full cash value. Such land would be taxed

on the basis of agricultural use until it was sold or it was converted to a more intensive use. At that time a deferred tax, not to exceed 5% of the full cash value assessment, would become due on the land. The law also provides for a similar assessment of lands being assembled or held for development as planned new towns or cities. This law was favorably accepted by farmers and has served as a model from which numerous other states have drafted farm land assessment laws. Additional changes were enacted during the 1972 session to prevent speculators from taking unfair advantage of the law. These changes, proposed by the Mandel Administration, modify the criteria which qualified a farm for agricultural assessment and changed the procedure by which the deferred tax is computed. For land converted immediately to non-agricultural use, there is a required additional payment of tax in the amount of two times the difference between the tax applicable to full cash value assessment and the tax applicable to agricultural use assessment. Although these changes may prevent misuse, it is unlikely they will have any effect on preserving agricultural land near metropolitan areas.

A recent proposal in Howard County was a more direct effort to preserve farm land through special taxing. It provided for agricultural districts where the owner/resident would certify his intent to maintain his land in agricultural use for a period of ten, twenty, or thirty years. In return, the owner/operator would receive a tax credit of 20, 50,

or 90%, respectively. The farm must qualify under present farm land assessment to qualify for inclusion in an agricultural district. Although this plan has not yet received approval, it is anticipated that it and similar proposals will be given serious consideration in the near future.

The extent to which farm land has been preserved as a result of the Maryland Farm Land Assessment Law is difficult to measure. It is generally assumed, however, that the rate of transfer from agricultural land to non-agricultural use has been slowed.

2. Zoning

The loss of prime and scenic agricultural land in Maryland is being threatened by increasing urbanization and land development. Land currently devoted to agriculture is being transferred to more intensive, more profitable, and irreversible urban uses. The future problem of a shortage of agriculture land could be reduced by effective land use planning.

Maryland is a complex state with areas that are urban, rural, and in transition; urban traffic and urban development often do not recognize political boundaries. One method at our disposal that can be effective in dealing with problems of expanding development is zoning.

At the present time, many of the Maryland counties use zoning as a development tool. Their regulations often specify types of housing

development that are permitted, density ratios, and the degree of industrialization that is allowed. Actual classifications that deal with the expressed intent of preserving agricultural land are really non-existent or ineffective. There are some regulations, however, that deal with rural development. For example, in Baltimore County, there are two classifications that refer to rural land. The Rural Development Zone (which encompasses forty percent of the County) is applied to land where no future is known. This translates into a holding zone and really does not pertain to preserving agricultural land. The second classification is a Rural Suburban zone which is used to preserve low density housing situations in watersheds and areas of deep topography but does not include farm land. The intent of this zone, when originally proposed, was for minimum lots of ten acres. However, the County Council changed this to one-acre lots.

Howard County, as an example of a transitional county, has no specific language in its present zoning regulations aimed at preserving agricultural land. Much of the zoning is geared to residential lot sizes which are presently one-acre minimums with a proposal to have some three-acre minimum lot sizes. Similar zoning regulations are found in most of the other Maryland counties.

When looking at minimum lot sizes, we must keep in mind that zoning regulations of this type are creating areas of semi-open space but not really preserving agricultural land. A development

of ten homes in a zone with a minimum lot size of ten acres would require farmland of 100 acres. The same development in a zone with one-acre minimum lots would only require ten acres, thus preserving 90 acres for farmland that would have otherwise been developed. Development is spread over a larger area in zones with larger minimum lot sizes and farmland is reduced.

In general, therefore, zoning does not seem to have been an effective tool for preserving agricultural land in Maryland. Past efforts at making zoning a preservation instrument have been changed or watered down in favor of more development.

Zoning can be effective, however, if zones are established expressly for the purpose of preserving agricultural land. In Washington County, there are agricultural districts which are zoned not solely to preserve agricultural land, but have provisions to exempt farming practices from zoning ordinances. Development is not permitted unless key public facilities such as sewer and water are accessible. In this rural county, this requirement is effective in keeping agricultural land intact for a period of time. In many areas zoning requirements for sewage disposal, water, roads, schools, etc. slow development but do little toward preserving agricultural land on a long-term basis.

There are many ways in which zoning could be used as a tool in the preservation of agricultural land. As noted above, agricultural zones could be developed which recognize and encourage agricultural

development as of prime importance and in which other types of development are discouraged.

Conservation zoning could be developed for flood plain areas, streambanks, etc. Agriculture uses in conformity with conservation objectives could be permitted in such areas. This type of zoning would have good public support and low public costs, is suitable to rural areas, and has a greater degree of permanency.

Zoning that would require the clustering of buildings in a development and preservation of some land in open space might also be used to help preserve some agricultural land. If types of farming compatible with the type of development could be found, then the open space could contribute jobs and income to the total community.

In summary, zoning can be used as a tool in the preservation of agricultural land. To date, however, it has not been effectively used to preserve prime agricultural land.

3. Governor's Commission To Study Agricultural Land Preservation

In response to House Joint Resolution 20, passed by the General Assembly in its 1967 Session, Governor Agnew appointed a Commission To Study Agricultural Land Preservation. The charge given the Commission in the Resolution was "to propose a long-term plan for the preservation of the highly productive agricultural lands in Maryland, to develop guidelines for the use of the remaining agricultural lands in the State in order to meet the future needs

of our society, and to consider the relationship of agricultural lands in its various uses to established taxing and assessing procedures."

The Commission in an interim report to a Legislative Council Subcommittee in September 1968 noted that "land is a non-renewable resource," and that, "Once land is removed from the agricultural or open space sector for use in community, commercial or industrial development, it is forever lost from the reservoir of natural resources that may contribute to food production and to open space."

Because of special interest and concern in the Legislature at that time--1968--the attention of the Commission was, of necessity, directed to the latter part of its charge--relationship of agricultural land and its various uses to taxing and assessing procedures. To again quote from the Interim Report: "it might be well to refer to a paper on taxation of agriculture presented in Milwaukee at a conference on property taxation by Barlowe of Michigan State in 1965. He recalled that the property tax was invented by agriculture in an agricultural society at a time when agriculture was the dominant industrial, commercial and business form in the country. Revenue needs of the states and local governments in those days were small in comparison with the cost of services demanded by society for roads, education, law enforcement, welfare and other programs today. These changes in demands have placed a greater tax burden upon agricultural property than can be derived from the income

producing capacity of the land.

"Taxes are not the only item of increased concern to the agricultural sector. Costs of production have risen almost continually with little or no change in the price level received by farmers. Increased efficiency of production has been achieved at the farm level to a remarkable degree, yet this cannot offset increased costs inherent under the characteristic cost/price squeeze that besets agriculture. Snyder of California stated that in 1950 U. S. farmers paid $4 of each $100 of net farm income in property taxes alone and this increased to more than $10 by 1965. This increase may have been greater near urban centers where urbanization was taking place."

The Commission noted "Farmland tax assessment does give special treatment to land owners and as a result does encourage inflationary land prices. Due to the low assessments and the current tax rate, owners can hold land for long periods of time in anticipation of capital gain associated with urban expansion. During the waiting period, the taxes on his land are low enough to justify retaining the land in its present use.

"However, this special tax treatment, when applied to farmland actively used in agricultural production, has enabled many farmers in the rural-urban areas to continue farming. Without it many would have been forced to sell their land, thereby further encouraging land speculation."

In a report dated September 20, 1968, the Commission made these recommendations:

(1) Continue assessment of land devoted to agricultural use on the basis of agricultural value rather than fair market value.

(2) Establish a state board or commission to review appeals of land owners denied agricultural use value assessments.

(3) Develop a single legal definition for agricultural use.

(4) The following conditions should apply to agricultural use land:

a. It should receive agriculture use assessment so long as it is actively farmed.

b. If the land is zoned or otherwise identified for more intensive use at the instance of the owner, a contingent assessment based on fair market value will apply from date of zoning.

c. Agricultural use assessment will be terminated and a roll back tax equal to the difference between the contingent assessment (computed as in "b" above) and taxes actually paid becomes due when a subdivision plat is filed or when a part of the tract is sold for development purposes.

The Commission had some interesting comments to make concerning proposed restrictions in farmland assessment laws.

"Some states have introduced limitations in their farmland assessment laws. These limitations place restrictions upon the eligibility of properties for farmland assessment based upon such factors as:

(1) acreage (less than three or three to ten acres); (2) sale price per acre; (3) a stated proportion of the individual's income from farming; (4) gross farm sales; and (5) dedication of land to agricultural use for a stated number of years. All of these provisions are designed to take the benefit of the special agricultural tax away from the land speculator and developer, but each limitation is subject to the objection that it denies this benefit to taxpayers who may be full time farmers.

"It is possible that a farmer may have to pay a purchase price greatly in excess of the value of land as farmland in order to obtain desirable and convenient land to farm.

"The exclusion of lands which comprise less than 10 acres under one ownership from the special agricultural tax would be harmful to those farmers who engage in special, intensive types of farming, such as vineyards, poultry, flower growing, et cetera.

"The requirement that land be owned by an individual who receives most of his income from farming in order to qualify for the special agricultural tax is unreasonable in light of the traditionally fluctuating farm income and the fact that many families have income sources other than farm operations. Some 31% of Maryland farms were listed as part time in the 1964 Census."

As noted, the recommendations of the Commission were presented to the Legislative Council in the fall of 1968. These recommendations undoubtedly influenced the amendments to the Farmland Assessment

Law which was passed by the General Assembly in 1969. Of necessity the entire work of the Commission had to be devoted to the matter of farmland assessment and it accomplished much for Maryland agriculture. Its term of appointment ended before it could turn attention to other parts of its charge.

4. Land Use Bills Proposed In the 1972 and 1973 Legislative Sessions

In the 1972 and 1973 Sessions of the Maryland Legislature, there was strong interest in land use and many bills were considered. While most of these related to the broad range of land use problems in the State, all of them would have had direct effects on agriculture. It is, perhaps, worthy of note that only one of them included the preservation of agricultural land as a specific objective.

Although none of the bills were enacted, a Governor's Commission on Land Use is giving further consideration to the matter with the objective of presenting new land use legislation in 1974. It is hoped that there will be input from the agricultural community and from this Committee in any new land use legislation to be considered.

An examination of some of the bills from the standpoint of effect on preservation of agricultural land may be of value to this Committee and to the State Legislature.

a. 1972 Legislative Session

(1) Senate Bill 254--Goodman Bill

Senator William Goodman, Prince George's County, Maryland, introduced the concept of development rights to

aid in the preservation of open space. His bill provided for the creation of planning districts which might be counties, watersheds, or other units. The local planning and zoning body would determine the amount of development to be permitted in the district and to develop a master plan. All land owners would then receive development rights in proportion to the amount of land owned measured as a percentage of the total acreage in the district. For each type of development permitted by the master plan in certain areas of the district, a definite number of development rights would be required. The developer would have to own both the property to be developed and the required number of rights. To obtain the rights he would have to purchase them from owners in areas of the district where development was not planned. Thus land owners in rural areas, for example, would share in the appreciation of land values in other sections of the district.

While this bill was not favorably received in the Maryland Legislature, it served as the basis for the New Jersey Blueprint Commission's plan which was submitted in 1973. The development rights concept is the only concept to emerge in recent years that would permit farmers to keep land in agriculture and, at the same time, to share in appreciation of land values.

b. 1973 Legislative Session

(1) House Bill 341 (Arnick Bill) and Senate Bill 362 (James Bill)

The purposes of both bills are essentially the same. The intent is that the General Assembly declare it to be State policy to "favor patterns of land use planning, management, and development which are in accord with sound environmental, economic, and social values and which encourage the wise and balanced use of the State's resources" and further "to provide a mechanism by which land management decisions of wide public concern can be evaluated."

House Bill 341 proposed creation of a Land Protection Commission to administer the provisions of the Act. The Commission was to consist of seven members appointed by the Governor with the advice and consent of the Senate.

Senate Bill 362 provided for a State Land Use Board within the Department of State Planning. This Board, appointed by the Secretary of State Planning with the approval of the Governor and advice and consent of the Senate, would consist of nine members with one member specifically from agriculture.

Both bodies would have the power, after consultation with local government officials, to designate areas of critical state concern. These areas include flood plains; areas

around interstate interchanges and around major airports; all state-owned or leased forests, parks, scenic preserves, historic monuments, and natural recreation areas; aquifer recharge areas; and large-scale developments. The Senate bill included prime agricultural lands as areas of state concern.

Both bills provide that within six months of designation of an area of critical state concern, local governments would have to prepare and adopt development regulations for the area. Such regulations would be subject to review and approval by the State land use body. If local government failed to act, then the State body could prepare and adopt such regulations.

The agricultural community had a number of concerns about these bills. First, there was the matter of an agriculture representative on the State land use body. One representative from agriculture was finally included in Senate Bill 362. A second concern was that farmland could be included in areas of critical State concern and, if so included, then the value of that land might be fixed at agricultural use value rather than at market value. No compensation was provided to landowners within critical areas for this possible loss in development value. There was also the general objection to State control over areas

within the counties. Many people felt that the matter of land use deserved more time and attention than was available during the Legislative Session.

b. (2) Senate Bill 728 (Goodman Bill)

This bill states "the General Assembly finds that rapid development and unwise land use have detrimentally affected the balance between the State's natural resources, environmental quality, social welfare, economic welfare, and the quality of life in general." In order to correct the situation it directs the Secretary of State Planning, in conjunction with secretaries of other State departments, to adopt guidelines with minimum standards which must be used by the political subdivisions to develop regulations and procedures to be used for the development and implementation of all land use plans.

In summary, the Subcommittee, after reviewing past and present efforts to protect agricultural land in Maryland, finds that these efforts have been only partially effective in preserving agricultural land. The Subcommittee suggests:

1. That the Maryland Farmland Assessment Law be continued in present form.
2. That in the development of any State legislation related to land use or in the appointment of any State body to administer State land use legislation there be strong representation from agriculture.
3. That the development rights concept be given careful consideration in connection with the development of agricultural districts or State critical areas.